

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Petition of Covad
Communications Company for Arbitration
of an Interconnection Agreement with
Qwest Corporation Pursuant to
47 U.S.C. § 252(b).

PREHEARING ORDER

This matter came on for a telephone prehearing conference before
Administrative Law Judge Kathleen D. Sheehy on May 10, 2004.

The following persons participated in the prehearing conference:

Karen Shoresman Frame, Senior Counsel, Covad Communications
Company, 7901 Lowry Boulevard, Denver, Colorado 80230; and Patrick
Judge, Esq., Briggs and Morgan, PC, 2000 First National Bank Building,
St. Paul, Minnesota 55101, for Covad.

Jason D. Topp, Qwest Corporation, 200 South 5th Street, Room 395,
Minneapolis, MN 55402; Winslow B. Waxter, Qwest Corporation, 1801
California Street, Denver, Colorado 80202; and Mary Rose Hughes,
Perkins Coie, LLP, 607 – 14th Street NW, Washington, DC 20005-2011,
for Qwest.

Priti Patel and Julia Anderson, Assistant Attorneys General, 525 Park
Street, Suite 200, St. Paul, MN 55103, for the Department of Commerce
(Department). Edward Fagerlund also participated.

Kevin O'Grady, Analyst, Minnesota Public Utilities Commission, 350 Metro
Square Building, 121 East Seventh Place East, St. Paul, MN 55101, for
the Commission staff.

PROCEDURE

1. This proceeding shall be conducted in accordance with Minn. R.
7811.1700.

PARTIES AND OBSERVERS

2. The original parties to this proceeding are Covad and Qwest. The
Department has requested and is granted (if the Commission has not already done so)

the right to intervene pursuant to Minn. R. 7812.1700, subp. 10. The Department shall have all the rights and responsibilities of the two negotiating parties.

SCHEDULE

3. The following schedule is established:

- a. May 14, 2004: Deadline for Qwest to file a motion to dismiss concerning § 271/252 issue identified in the petition for arbitration.
- b. May 25, 2004: Deadline for Covad and the Department to respond to the motion to dismiss.
- c. May 28, 2004: Deadline (by 12:00 p.m. CDT) for Qwest to reply.
- d. June 16, 2004: Simultaneous filing of direct testimony.
- e. July 8, 2004: Simultaneous filing of response testimony.
- f. July 19, 2004: Discovery cut-off.
- g. July 28, 2004: Covad/Qwest joint filing of final issues matrix.
- h. August 4-5, 2004: Hearing, commencing at 9:30 a.m., at the offices of the Public Utilities Commission.
- i. August 25, 2004: Post-hearing briefs.
- j. September 3, 2004: Reply briefs.
- k. September 24, 2004: ALJ Decision.
- l. October 29, 2004: Commission decision.

4. The deadline set by statute and rule^[1] for decision of this matter by the Commission is July 29, 2004. In order to accommodate the schedule above, Covad and Qwest have agreed to waive the statutory deadline until October 29, 2004.

5. Covad and Qwest shall keep the ALJ, Commission, and Department informed with regard to the status of their continuing negotiations. If more issues are resolved before the hearing, Covad and Qwest shall promptly advise all concerned.

FILING OF DOCUMENTS

6. All prefiled testimony and other documents shall be filed and served in accordance with the schedule above. Filing with the Administrative Law Judge and service shall be effective upon receipt of a copy by e-mail or other means.

7. All documents filed, including prefiled testimony, but excluding information requests and responses, shall be filed as follows:

- The parties shall mail or deliver 15 copies of all documents with the Commission, for distribution among Commissioners and Commission staff. Copies shall be addressed to: Burl W. Haar, Executive Secretary, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147.
- The parties shall mail or deliver to the Administrative Law Judge two copies of all documents filed, and an electronic copy shall be e-mailed to the Administrative Law Judge. **No information requests or responses shall be filed with or sent to the Administrative Law Judges.**
- After the Administrative Law Judge issues a Report, all documents shall be filed with the Executive Secretary of the Commission, and the Administrative Law Judge shall be removed from the service list. Filing with the Commission after the date of the Administrative Law Judge's Report is subject to the Commission's procedural rules.
- One copy shall be served on the attorney for each party of record.

8. E-mail and paper copies of all documents shall be served to the persons on the attached service list. Proof of service shall be filed with each filed document or within three business days thereafter.

9. Any document or information filed with or supplied to the Commission or the Commission staff shall be served upon every party.

DISCOVERY

10. All requests for information shall be made by e-mail followed-up by regular mail to the party from whom the information is sought, with a copy to all other parties. Information requests received after 3:00 p.m. CDT on business days, weekends, or state holidays shall be considered to be received the next business day, except that any U.S. mail received during business hours shall be considered to be received on the same day.

11. Responses to information requests must be provided within ten business days, except that after direct testimony is filed on June 16, 2004, responses must be provided within five business days. There shall be a continuing obligation to update and supplement information responses. Responses to information requests need not be supplied to other parties unless specifically requested.

12. In the event the information cannot be supplied within the required response time, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and to work out a schedule of compliance with the requesting

party. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Such motion should be made by e-mail notice and a telephone conference among the Administrative Law Judge and affected Parties.

13. Parties asked to provide "Confidential Information" may require the requesting party to comply with the terms of a Protective Agreement and Order.

PREFILED TESTIMONY AND ORDER OF TESTIMONY

14. All prefiled testimony shall be in question and answer format or other easily understood and easily referenced format.

15. Prefiled testimony shall be received as exhibits. Prefiled testimony that is amended or that is not offered into the record shall be considered withdrawn. Except for good cause shown, all revisions or corrections to any prefiled testimony shall be made in writing and served upon the Administrative Law Judge and other parties by e-mail no later than three days prior to commencement of the hearing.

16. The hearing will be conducted on an issue-by-issue basis, meaning the parties shall agree in advance on the order in which disputed issues will be presented, and the parties will call their witnesses on each issue (Qwest first, Covad second, the Department third) before advancing to the next issue. The examination of witnesses will proceed in the same order.

17. Each witness shall be allowed 15 minutes at the beginning of his or her testimony to summarize and highlight their prefiled testimony and to add new testimony in rebuttal to the testimony of other parties' witnesses.

18. Except for good cause shown, objections by any party relating to the qualifications of a witness or the admissibility of any portion of a witness's prefiled testimony shall be considered waived unless the objecting party states its objection in writing with particularity to the Administrative Law Judge and serves a copy of such objections on the Commission and all other parties prior to commencement of the hearing. If a party objects to testimony, the party shall be permitted to lay further foundation for the objection through cross-examination of the witness. Any prefiled testimony to which no objection is received in accordance with this paragraph shall be admitted during the hearing without the necessity of laying foundation for the testimony.

May 12, 2004

/s/ Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

^[1] See Minn. R. 7812.1700, subps. 19 & 21; 47 U.S.C. § 252(b)(4)(c); 47 C.F.R. § 51.801(b).